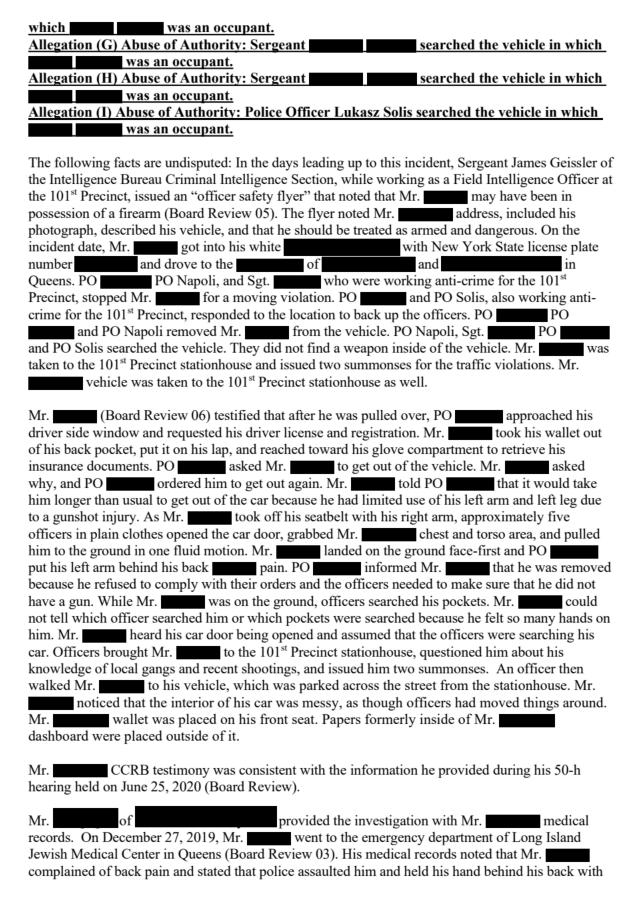
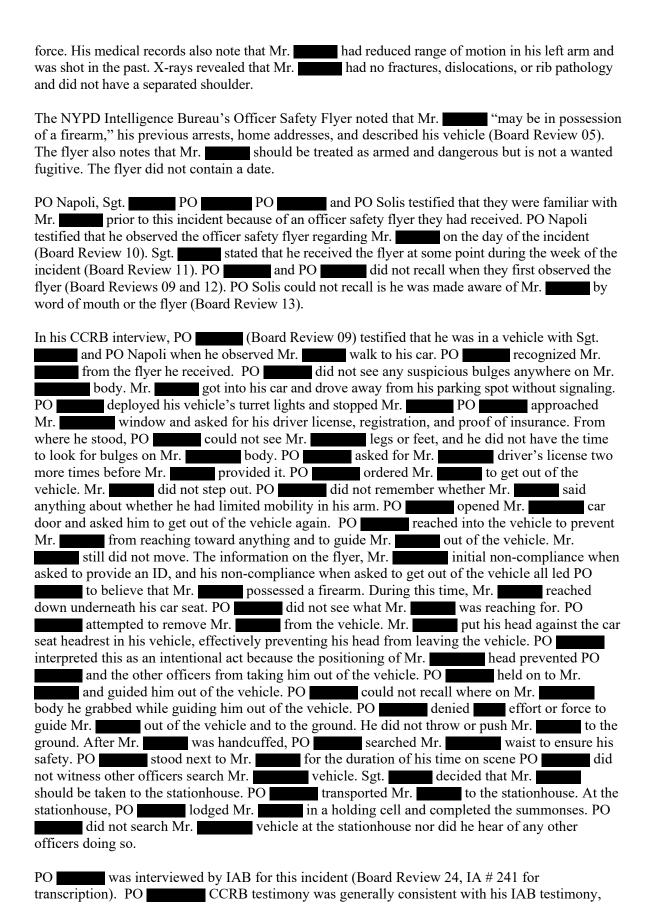
## CCRB INVESTIGATIVE RECOMMENDATION

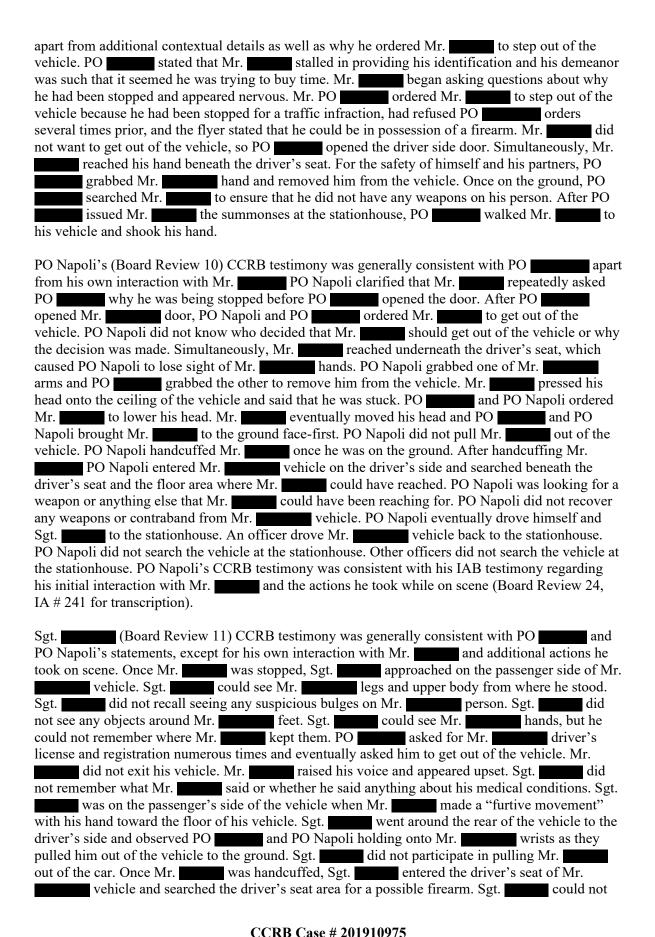
Investigator:		Team:	CCRB Case #:	V	Force		Discourt.		U.S.
Charis Jones		Squad #3	201910975	V	Abuse		O.L.		Injury
Incident Date(s)		18 Mo. SOL	EO SOL	Loc	ation of	Incide	ent:	Pre	cinct:
Thursday 12/26/2019 1:15 PM		06-26-2021	02-10-2022						101
Date/Time CV Reported		CV Reported At:	How CV Reported	1:	Date/Tim	ne Rec	eived at CCI	RB	
Fri, 12/27/2019 9:10 AM		CCRB	Phone		Fri, 12/27	7/2019	9:10 AM		
Complainant/Victim	Type	Home Add	dress						
1.	Comp/V	ictim	Fa	r Roc	kaway N	NΥ			
Subject Officer(s)	Shield	TaxID	Command						
1. POM	-		101 PCT						
2. SGT			101 PCT						
3. POM Lukasz Solis	14287	943832	101 PCT						
4. POM			101 PCT						
5. POM			101 PCT						
Officer(s)	Allegati	on			Inv	estiga	ator Recon	nme	ndation
A. POM	Force: Pagainst	olice Officer	used physica	l forc	e A.	Subs	tantiated		
B . POM Roberto Napoli	_		Napoli used physical	force	В.	Subs	tantiated		
C. POM	_	olice Officer	used physica	l forc	е С.	Exor	nerated		
D. POM	Abuse of	f Authority: Police Of	ficer	frisk	ed D.	Exor	nerated		
E. POM	Abuse of	f Authority: Police Of	ficer	searc	ched E.	Exon	erated		
F . POM Roberto Napoli		f Authority: Police Of cle in which	ficer Roberto Napoli s was an occupan		ned F.	Exon	erated		
G. SGT	Abuse of vehicle i	f Authority: Sergeant n which	was an occupant.	ched t	the G.	Exor	nerated		
H. SGT	Abuse of vehicle i	f Authority: Sergeant n which	was an occupant.	ched t	the H.	Subs	tantiated		
I . POM Lukasz Solis		f Authority: Police Of n which	ficer Lukasz Solis sea was an occupant.	rched	the I.	Subst	antiated		
J. POM		ssible Misconduct No failed to prepare a Th	oted: Police Officer areat, Resistance, Injur	y Rep		Other	Possible N	lisco	onduct
K . POM		ssible Misconduct No failed to prepare a Th	oted: Police Officer reat, Resistance, Injur	y Rep		Othe	er Possible	Misc	onduct
L . POM Roberto Napoli			oted: Police Officer Ro eat, Resistance, Injury			Othe	r Possible I	Misc	onduct
M. SGT		ssible Misconduct No	oted: Sergeant reat, Resistance, Injury	v Ren		Othe	er Possible	Miso	conduct

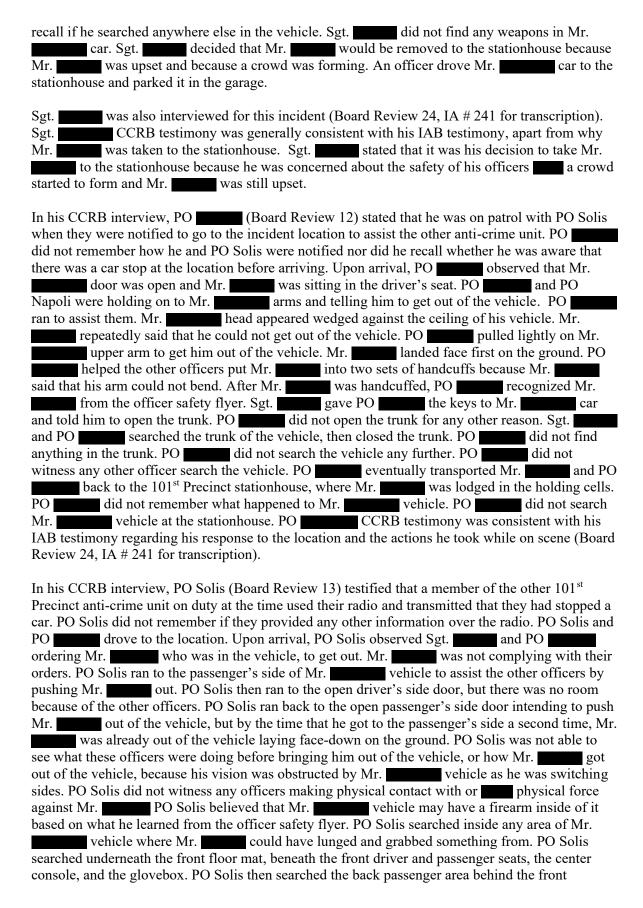
## Case Summary

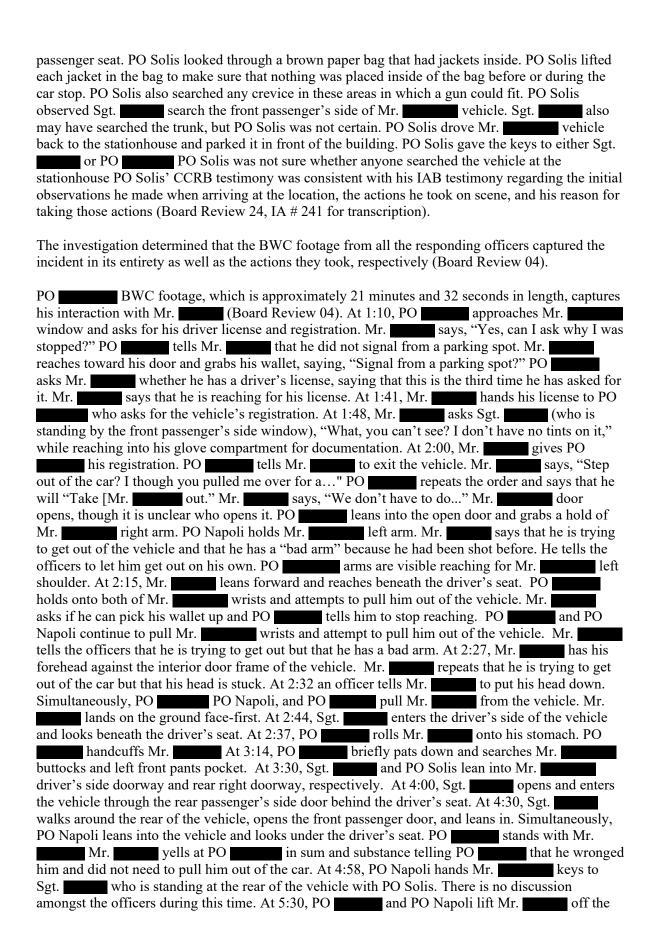
On December 27, 2019, filed this complaint with the CCRB over the phone. This case was originally assigned to Investigator Zev Carter and was reassigned to the undersigned investigator on October 8, 2021.
On December 26, 2019, at approximately 1:15 p.m., Mr. was driving his car when Sergeant Police Officer and Police Officer Roberto Napoli of the 101st Precinct stopped him in the vicinity of Brookhaven Avenue and Caffrey Avenue in Queens for failing to signal and driving with an obstructed view. Police Officer and Police Officer Lukasz Solis, also assigned to the 101st Precinct, responded to the location as well. PO PO Napoli, and PO pulled Mr. out of his vehicle (Allegations A and B, Force, Substantiated; Allegation C: Force, Exonerated). PO frisked and searched Mr. (Allegations D and E: Abuse of Authority, Exonerated). PO Napoli and Sgt. searched the driver's side of Mr. vehicle (Allegation F and G: Abuse of Authority, Exonerated). Sgt. and PO Solis searched the entirety of Mr. vehicle (Allegations H and I: Abuse of Authority, Substantiated). Mr. was subsequently taken to the 101st Precinct stationhouse.
PO PO Napoli, PO and Sgt. failed to prepare Threat, Resistance, and Injury (TRI) reports for this incident (Allegations J-M: Other Possible Misconduct Noted).
PO issued Mr. traffic summons #B193022559 for failure to signal and traffic summons #B193022575 for driving with an obstructed view (Board Review 01, 02). No arrests were made, and no additional summonses were issued as a result of this incident.
Mr. civil attorney, of sustained a fractured rib as a result of hitting the ground after the officers pulled him out of his vehicle (Board Review 03).
PO has been promoted to a Detective, Third Grade, and now works in the 101st Precinct Detective Squad.
IAB conducted a concurrent investigation into this incident, which generated log # 20-01578 (Board Review 07).
This case contains body-worn-camera (BWC) footage from PO PO PO Solis, Sgt. PO Napoli, and PO (Board Review 04). The officers' footage, respectively, captures the incident in its entirety.
Findings and Recommendations
Allegation (A) Force: Police Officer used physical force against
Allegation (B) Force: Police Officer Roberto Napoli used physical force against
Allegation (C) Force: Police Officer used physical force against
Allegation (D) Abuse of Authority: Police Officer  Allegation (E) Abuse of Authority: Police Officer  searched
Allegation (F) Abuse of Authority: Police Officer Roberto Napoli searched the vehicle in

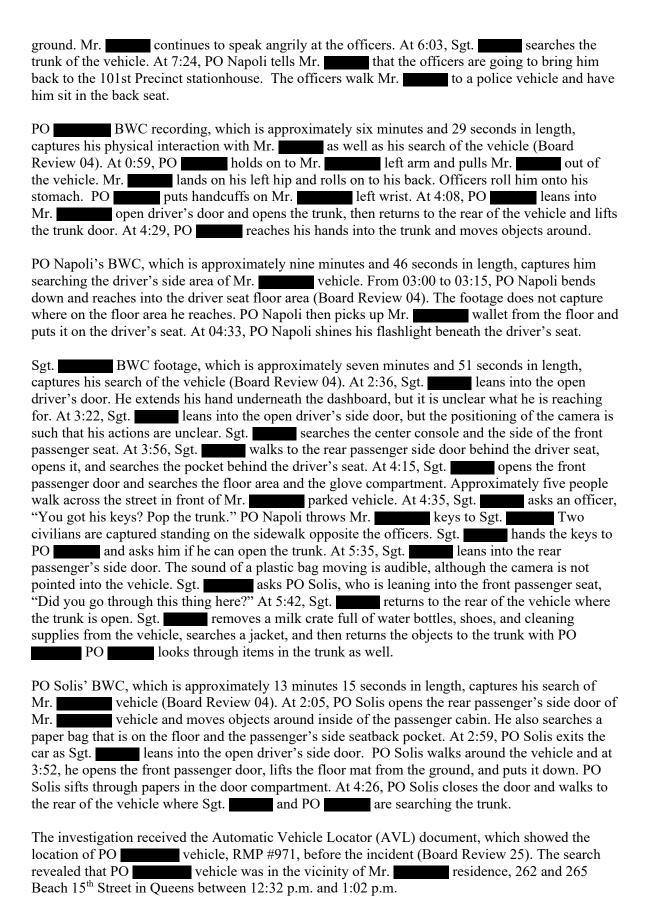


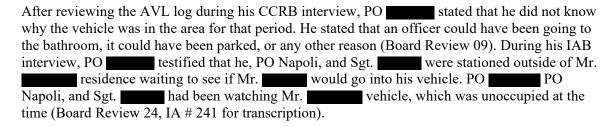




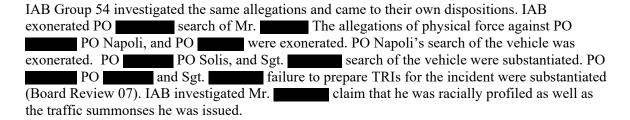








No TRI reports were generated as a result of this incident (Board Review 14).



NYPD Patrol Guide Procedure 221-01 states that "force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances" (Board Review 15). The following factors, among others, are to be considered when determining whether the use of force is proper; the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; the immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; the number of subjects in comparison to the number of officers; the size, age, and condition of the subject in comparison to officers; the subject's violent history (if known); and the presence of a hostile crowd or agitators (Board Review 16).

In <u>People v. Mitchell, 185 A.D.2d 163</u>, the court noted that while the police are permitted to rely on the direction of their fellow officers to arrest without simultaneously knowing the underlying facts which led to such direction, they cannot be considered to have relied on information possessed by each other without there having been any communication of either the information itself or a direction to arrest (Board Review 28).

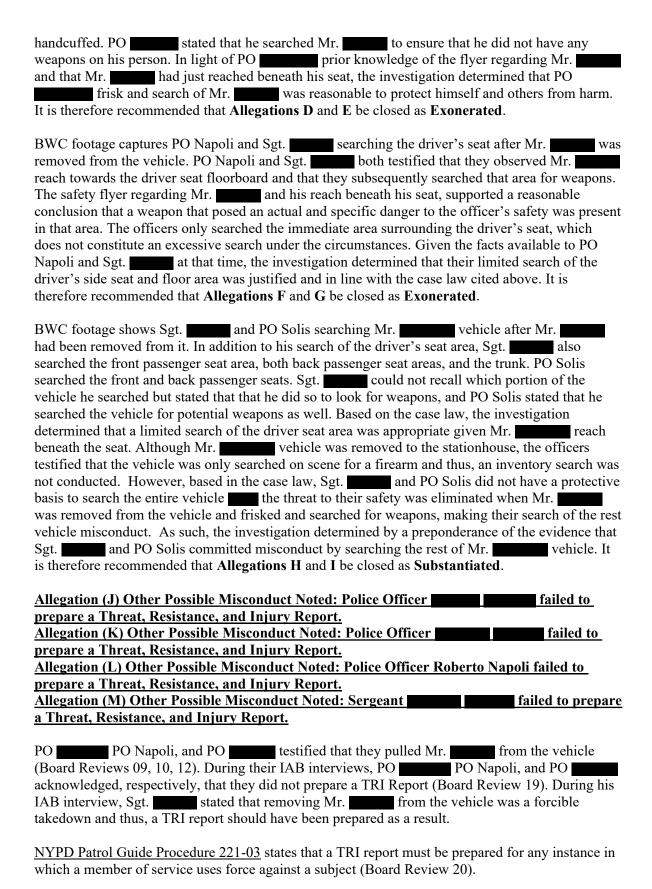
In <u>People v. Hardee 126 A.D.3d626</u>, the court established that the facts available to the officer, including the defendant's furtive behavior, suspicious actions in looking into the back seat on multiple occasions and refusal to follow the officers' legitimate directions, went beyond nervousness. Rather, the defendant's actions both inside and outside the vehicle created a "perceptible risk" and supported a reasonable conclusion that a weapon that posed an actual and specific danger to the officers' safety was secreted in the area behind the front passenger seat, which justified the limited search of that area, even after the defendant had been removed from the vehicle (Board Review 17).

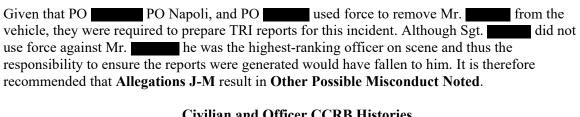
In <u>People v. Torres, 74 N.Y.2d 224</u>, the court established that a police officer acting on reasonable suspicion that criminal activity is afoot and on an articulable basis to dear for his own safety may intrude upon the person or personal effects of the suspect only to the extent that is actually necessary to protect himself from harm (Board Review 26).

In <u>People v. Mundo</u>, 99 N.Y .2d 55 the court held that absent probable cause, it is unlawful for a police officer to invade the interior of a stopped vehicle once the suspects have been removed and patted down without incident, as any immediate threat to the officers; safety has consequently been eliminated (Board Review 18).

NYPD Patrol Guide Procedure 218-13 states that whenever any property comes into the custody of this Department an inventory search will be conducted as follows; if the contents to be inventoried are in an automobile 1) Search the interior of the vehicle thoroughly. This search should include any area that may contain valuables including but not limited to; the glove compartment, console, map pockets in or on doors and rear of side seats, areas under the seats and in and around the seat stuffing springs, under the floor mats, under and behind the dashboard, inside the ashtrays, in the air vent where accessible under the hood, and the trunk. 2) Force open trunk, glove compartment, etc. only if it can be done with minimal damage and 3) Remove all valuables from the vehicle and invoice on a separate property clerk invoice (Board Review 27).

Although Mr. did not allege being frisked, BWC footage revealed that he was frisked and searched by PO Based on the BWC footage, the investigation also determined that PO PO Napoli, and PO were the subjects of the force allegations and that PO searched Mr. Mr. could not attribute which officers took these specific actions against him. Although PO subsequently searched the trunk of Mr. vehicle, a vehicle search allegation was not pled against PO Sgt. had instructed him to do so.
The BWC footage shows Mr. providing PO with all his documentation upon PO request. The BWC also shows PO ordering Mr. to get out of the vehicle three consecutive times without giving Mr. the time to do so, which inherently escalated the situation. Mr. to the officers that he was trying to step out of the vehicle but that it would take him a moment because he had an injured arm. The BWC also showed Mr. asking the officers if he could pick up his wallet while simultaneously reaching for it. PO and PO Napoli testified that they could not see where or what Mr. was reaching for, which concerned them based on what was noted in the officer safety flyer, and immediately proceeded to remove him from the vehicle. However, given PO and PO Napoli did not allow Mr. a reasonable amount of time to comply with their orders despite Mr. werbal compliance, the investigation determined that the way in which PO and PO Napoli removed Mr. (namely pulled all the way to the ground) was excessive under the circumstance. Furthermore, the investigation determined that some force to remove Mr. would have been appropriate but not to the extent that PO and PO Napoli employed given that Mr. was not actively resisting their orders, the short duration of their preceding interaction with Mr. was not actively resisting their orders, the short duration of their preceding interaction with Mr. the absence of a hostile crowd or agitators, and Mr. physical condition in comparison to theirs. In light of the above information, the investigation determined by a preponderance of the evidence that PO and PO Napoli's use of force constitutes misconduct. It is therefore recommended that Allegations A and B be closed as Substantiated.
PO testified that upon his arrival he observed PO and PO Napoli physically engaged with Mr. and therefore assisted them in taking Mr. out of the car. Per the court's decision in People v. Mitchell, PO did not need to know the underlying facts that precipitated the situation to assist PO and PO Napoli in pulling Mr. out of the car. Therefore, the investigation determined that his use of force against Mr. did not constitute misconduct. It is therefore recommended that <b>Allegation</b> C be closed as <b>Exonerated</b> .
BWC footage shows PO frisking and searching Mr. on the ground after he was





## **Civilian and Officer CCRB Histories**

- has been party to three other CCRB complaints and has been named as a victim in one other allegation (Board Review 21).
  - o 200718177 contained an allegation of physical force which was unsubstantiated.
- Sgt. has been a member of service for eight years and has been a subject in one other CCRB complaint and one other allegation, which was not substantiated. Sgt. CCRB history does not reflect any apparent pattern pertinent to this investigation.
- has been a member of service for eight years and has been a subject in eight other CCRB complaints and 19 other allegations, six of which were substantiated.
  - o 201505360 contained substantiated allegations of interference with a recording device, retaliatory summons, threat of arrest, and discourtesy against PO The Board recommended charges and PO forfeited two vacation days after the NYPD found him guilty only of issuing a retaliatory summons. PO was also cited with other misconduct for failure to prepare a memo book entry and making a false official statement.
  - 201800301 contained two substantiated allegations of chokeholds against PO The Board recommended charges and the PO forfeited 30 vacation days after the NYPD found him guilty.
  - O PO CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Napoli has been a member of service for seven years and has been a subject in six other CCRB complaints and 19 other allegations, none of which were substantiated. PO Napoli's CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO has been a member of service for seven years and has been a subject in one other case and three other allegations, none of which were substantiated. PO CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Solis has been a member of service for 14 years and has been a subject in nine other cases and 11 other allegations, one of which was substantiated.
  - 201710526 contained a substantiated allegation of refusal to provide shield number against PO Solis. The Board recommended command discipline B and the NYPD imposed instructions.

## Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- filed a Notice of Claim with the City of New York claiming assault, battery. false arrest, false imprisonment, malicious prosecution, intentional infliction of emotional distress, negligent infliction of emotional distress, outrageous conduct giving rise to personal injuries, prima facie tort, and violation of civil rights and seeking \$5,000,000, plus attorney's fees in redress (Board Review 22). A 50H hearing was held on June 25, 2020 (Board Review 23).
- According to the Office of Court Administration (OCA), between February 21, 2013 and November 29, 2021, Mr. was convicted of operating a motor vehicle while under the influence of alcohol or drugs (once) and fined \$300, referred to a drinking driver

program, and had his license suspended for 90 days (Board Review 23). OCA does not list any other felony or misdemeanor convictions.

			<del></del>
Squad:	3		
Investigator:	Charis Jones	Inv. Charis Jones	12/27/2021
	Signature	Print Title & Name	Date
Squad Leader: _	Olga Golub Signature	IM Olga Golub Print Title & Name	_12/27/2021 Date
Reviewer: _	Signature	Print Title & Name	